

Transport of Federal Prisoners on State Court Charges:

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One of the inadvertent headaches of living in a federal system, with its multi-layered criminal justice systems, is that sometimes the person you have charged with state crimes is also being held on federal charges. This presents a problem when you try to have the defendant transported to state court for arraignment, court hearing, trial date, or sentencing.

Transporting federal prisoners to state court is a very particular process, in which protocol and procedure must be carefully followed. A three step checklist, however, will help ensure your success.

Step One: Obtain a State Writ.

There is likely never going to be a class in law school or police training dedicated to the Writ of Habeas Corpus Ad Prosequendum.ⁱ (Say that five times fast!). Nonetheless, that little writ can save you innumerable problems in transferring federal prisoners to state court. Certain information should be included in the body of the writ. Specifically, you should include the Defendant's name (and federal corrections identification number if known), the state charges the Defendant is facing, the date of trial (or other hearing, such as arraignment or sentencing), the date of transport, and the date of expected return to federal custody.

On the distribution list for the clerk, list the prosecuting agency, defense counsel, the state court judge, the federal detention facility (this may be a local jail holding federal prisonersⁱⁱ or a Federal Corrections Institution), the regional U.S. Marshal's Office, and the local transporting agency (i.e.: usually the sheriff in Kentucky).

Step Two: The Prosecutor's Certification Form.

In the past, a laborious "10-point letter" was used after a writ was obtained to further notify the detaining agency of the upcoming transport, but today the simpler Prosecutor's Certification form is preferred for this step.ⁱⁱⁱ Two deputies or other transporting agents must pick up the prisoner from federal custody, and both officers must have signed the Prosecutor's Certification form in advance of the transport date.^{iv} This requirement means the prosecutor must have some discussion with the sheriff's office well before the transport date because the latter must plan in advance which deputies will perform the transport. Especially for a small department, such prior micro-planning can be difficult, but it is vitally important to a successful transport.^v Once completed, this form should be mailed (or faxed if limited time is an issue) to the detaining facility, and the best practice is to send a copy with the deputies performing the transport. (See endnote V for other requirements to pick up the prisoner). Along with the Prosecutor's Certification form, a *certified copy of the state writ* (the uncertified copy normally distributed from the circuit clerk is not always enough) should also be mailed to the detaining agency (Federal Corrections Institution or local jail) well in advance of the actual transport date because some detention center records clerks will require a certified copy of the writ before permitting release of the prisoner on state charges. Most detention facilities do not require a certified copy of the writ, but it pays to err on the side of caution, or at least to check with the detaining institution to clarify any particular requirements before transport is attempted.

Step Three: Be Vigilant, Check for the Feds Moving the Defendant.

Anyone with doubts regarding the existence of some sort of Murphy's Law should watch the effect of entropy on the simplest attempts to transfer federal prisoners to state court. Rest assured that the week before transport, for whatever reason, your prisoner will be moved to another facility. At any rate, one has to provide for this eventuality by checking whether the prisoner has been moved, at least about a week before the planned transport. The transporting agency also needs to check the day before transport, to save a needless trip if the prisoner has been moved. One preventive action the prosecutor can take is to draft the writ so as to allow transport from another location in case Defendant has been moved. The writ example in the endnotes contains such a provision, making last minute changes of prisoner location at least remediable. The attached sample writ also includes a measure for housing the prisoner locally pending trial, as early pickup may be more advantageous for the transporting agency; in the latter situation the local jail should also be placed on the writ distribution list.

A Brief Word on Witnesses.

A related issue is the transfer of federal prisoners to testify in state court. The procedures and pitfalls are exactly the same as in transporting merged state/federal prisoners for prosecution, except the proper writ is one of Habeas Corpus Ad Testificandum.^{vi} The use of the correct writ name is again less a matter of formula than of ensuring the purpose of transport is clear (at least to the detention facility's legal counsel).

Dealing with Soaring Gas Prices and Shrinking Transportation Budgets.

The need to transport federal prisoners to state court on local charges is unavoidable. The United States is exactly that, a fused collection of state and federal jurisdictions, sometimes separate, sometimes intermixed. Independent state prosecutions should not be permitted to falter just because the accused is also a federal prisoner. The perpetrator is no less at fault for violating the persons and laws of the Commonwealth merely because he has also committed crimes against the federal authority. Furthermore, consider that under the Interstate Agreement on Detainers, the prisoner has a right to see state charges against him brought to conclusion,^{vii} and transport of the prisoner may thus be required regardless. In the current climate of rising transportation costs and relatively shrinking law enforcement budgets, some discretion must be had about what charges bear further prosecution against a federal prisoner. There is no easy solution to choosing which Defendants to proceed against and which cases should be dismissed or deferred until the Defendant is released from federal custody, but the decision must be made at times. Responsibility for paying for transport on state or local charges lies with the Commonwealth^{viii}, and nothing can be more frustrating than seeing a good state case deferred or dismissed simply because the prisoner has been moved across country on federal charges. Staying current on the Defendant's location can save needless transportation costs, and being vigorous in pursuing state charges before the Feds move the Defendant can prevent many problems in this area, but eventually situations will arise that require discretion on which charges to pursue. An established office policy, preferably drafted in conjunction with the local transporting agency (who will bear the cost at least short term until reimbursed pursuant to KRS 64.070(1)), can give guidance in the decision making process.

Conclusion:

Criminal defendants are not particular about which sovereign they offend, so state prosecution of perpetrators who have also violated the federal laws is inevitable. When pursuing state charges against federal prisoners, following the three steps above (obtaining a state writ, completing the Prosecutor's Certification, and remaining vigilant), as well as helping transporting officers avoid pitfalls in their duty, will help ensure a successful transport. Getting the federal prisoner to state court lays the necessary foundation to a successful prosecution on state charges.

ⁱ Law Latin: "that you have the body to prosecute." Black's Law Dictionary, 7th Ed. There is no magic language required in the writ title for the transport of federal prisoners, but use of the proper writ lets anyone reviewing the writ know exactly for what purpose you need the prisoner. The statutory framework is laid out in KRS 455.140. A copy of such a writ is attached:

COMMONWEALTH OF KENTUCKY
34TH JUDICIAL CIRCUIT
MCCREARY CIRCUIT COURT
DIVISION II
INDICTMENT NO.: 07-CR-0009X

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

WRIT OF HABEAS CORPUS AD PROSEQUENDUM

NATHAN NOGOOD

DEFENDANT

IT IS HEREBY ORDERED by this COURT that the Defendant, Nathan Nogood, shall be transported to the McCreary Circuit Courtroom in Whitley City, Kentucky on or before the 28th day of July, 2008 by the hour of 9:00 a.m. for purposes of trial in the above named Indictment which charges the Defendant with one (1) count each of Assault Second Degree and Persistent Felony Offender Second Degree. He shall be transported from the Federal Correctional Institution, Cumberland, Maryland by an officer of the McCreary County Sheriff's Department, who shall transport him back to the Federal Correctional Institution, Cumberland, Maryland upon conclusion of the court proceedings. The McCreary County Sheriff's Department may pick up the Defendant prior to the date of trial and house the Defendant in the McCreary County Jail. In the event the Defendant has been moved to another location, the McCreary County Sheriff's Department is authorized to transport the Defendant from that new location to court as above.

THIS ____ DAY OF _____, 2008.

Distribution:

Circuit Court Judge

Hon. Commonwealth's Attorney
Williamsburg, Kentucky 40769 (____)

Hon. Publica DeFender
Somerset, Kentucky 42501 (____)

McCreary County Sheriff's Office
Whitley City, Kentucky 42653 (____)

Records Clerk
FCI Cumberland
Federal Correctional Institution
Cumberland, MD 21502 (____)

U.S. Marshal Services
Eastern District of Kentucky
Lexington, Kentucky 40588 (____)

McCreary County Jail
Whitley City, Kentucky 42653 (____)

Clerk _____ Date _____

ⁱⁱ See the Kentucky provisions requiring detention of federal prisoners in local jails, KRS 441.035; 441.990.

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

This is to certify that I, _____,
Title, _____, hereby request temporary
custody of (Inmate's Name) _____
via IAD State Writ (check one), and do hereby agree to the following conditions
in connection with the request for custody of said inmate.

Conditions

- a. Agree that said inmate will be provided safekeeping, custody, and care and will assume responsibility for that custody to include providing the inmate with the same level of security required by Bureau of Prisons Policy.
- b. Agree to report to the Bureau of Prisons any problems associated with said inmate, to include disciplinary problems, medical emergencies, suicide attempt, escape or attempted escape or any other problem arising during commitment.
- c. Agree not to release said inmate on bail or bond or to commit them to an institution for service of any sentence imposed in connection with our prosecution.
- d. Agree to return said inmate to the federal institution from which they were obtained at the conclusion of the inmate's appearance in the proceeding for which obtained.
- e. Agree to notify the local jail authority of the responsibility to return the inmate to federal custody.

As the Prosecuting Official for the County/State of _____,
I, _____, Title, _____,
hereby submit the following information in connection with my request for temporary custody
of (Inmate's Name) _____,
Federal Register No. _____.

Information

1. Name of facility, location, contact person, and phone number where the inmate will be confined during legal proceedings.

2. Scheduled date for trial.

3. Projected date of return of the prisoner to federal custody:

4. Name and phone number of the state agency, specific name of agent(s) who will transport the inmate at direction of the court and whether a private carrier, contractor (if permitted by Bureau of Prisons policy), state agency, or the USMS, will be transporting the inmate for the state. *2 Spu CP & Signatures.*

5. Need for appearance of inmate and nature of action.

6. For State Writ cases only (not required for IAD):

- a. Name and address of court issuing writ, name of the judge, and name, address, and phone number of clerk of the court.

- b. Reason production on writ is necessary and reason another alternative is not available (for civil cases).

7. Signature and Title of Prosecutor

Date

Subscribed and sworn before (Date): _____

Signature of Notary Public:

Date

Original - JAC File, Copy - Central File
(This form may be replicated via WP)


This form replaces BP-5565 dtd FEB 94

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iv In addition, during transport and court proceedings (and if incarcerated at the county jail) the prisoner must be held in a manner that meets the level of security required by the U.S. Bureau of Prisons. In the past, this has meant at least two transporting officers, with at least one armed, and the prisoner being placed in handcuffs with Martin Chains at all times. The requirements of the Bureau of Prisons, however, could change at any time and the

transporting officers should have intimate knowledge of those requirements before and during transport. Probably the simplest way to keep abreast of any changes is to have the transporting officers and their supervisors (and the local jail, if necessary) contact the federal detention center prior to transport for a minimum requirements list. A two (2) page letter from a federal warden, outlining minimal transport requirements in late 2005, is attached:

OCT-24-2005 14:29 64FC1 TEXARKANA TX 903 838 4587 P.01

 U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution

October 24, 2005

Texarkana, TX 75501-7000

OPTIONAL FORM NO. 10 (7-00)

FAX TRANSMITTAL

TO: Robert Skerens Mr. Amy Wark
FROM: White, La. Prison 903-838-4587
DATE: 10/24/05 903-223-4424

Allen C. Trimble
Whitley County Commonwealth Attorney
34th Judicial Circuit
Post Office Box 430
Williamsburg, Kentucky 40769

RE: [REDACTED]
Reg. No. [REDACTED]

Dear Mr. Trimble:

In response to your request for temporary custody pursuant to a State Writ of Habeas Corpus ad Prosequendum, applicable forms are on file. Due to the inmate's custody and other conditions as outlined in Bureau of Prisons Program Statement 5538.02, the requirements described below apply. Be advised that the following requirements are the minimum standards to be met for an exchange of custody via State Writ to take place.


Staffing	A minimum of two transporting officers are required.
Weapons	IN custody inmates will be transported by a minimum of two escorts with at least one being armed.
Restraints	Handcuffs with Martin Chains shall be used at all times.

Inmates who are temporarily transferred pursuant to a State Writ remain under the primary jurisdiction of federal authorities. Should you accept temporary custody of this inmate, we wish to remind you that you are required to return the above named inmate to this institution after prosecution on all pending charges. While this inmate is in your temporary custody, he shall be held in a suitable jail that meets the level of security required by the Bureau of Prisons. Any problems associated with this inmate must be reported to the individual listed below. This inmate may not be released on bail while in your custody. Additionally, this inmate is not to be committed to a state correctional institution for service of any state sentence(s) that may be imposed as a result of your prosecution.

To help us with processing, please fill out the enclosed certification form and return to us prior to scheduling a date for assuming custody. Upon completion of the State proceedings, contact this office to schedule a date for the inmate's return to federal custody.

If you have any questions on this matter, please call Richard Goodsell, Inmate Systems Manager, at 903-838-4587, Ext. 364.

Sincerely,

 Paul A. Kastner
Warden

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^v When the transport takes place, to ensure a successful transport the deputies must bring photo identification, their badge or other sign of official authority, a copy of the Prosecutor's Certification Form, and certified copies of the state writ and the indictment when they pick up the prisoner from federal authorities. The Interstate Agreement on Detainers (KRS 440.450) requires the transporting officers to show, Article V (2) "upon demand: (a) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given. (b) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made." The Interstate Agreement on Detainers includes the United States. (Article II (1)).

^{vi} Law Latin: "that you have the body to testify." Black's Law Dictionary, 7th Ed. The statutory provision is KRS 455.150.

^{vii} KRS 440.450, Article III.

^{viii} KRS 440.450, Article V (8) requires "the state in which the one (1) or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner." KRS 64.070(1) states the requirements for reimbursement to the local transporting agency from the state treasury.